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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Review of Standards for Street Excavations and Restoration.) D.T.E. 98-22

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Comments of Commonwealth Gas Company

A. Introduction

Commonwealth Gas Company ("COM/Gas") presents these comments on the proposed "Standards To Be Employed by Public Utility Operators When Restoring any of the Streets, Lanes or Highways in Municipalities" issued by the Department of Telecommunications and Energy ("Department") by notice dated April 16, 1999 ("Proposed Standards"). The Department's Proposed Standards are based on street excavation and restoration standards submitted to the Department on November 20, 1998 by a technical committee of interested parties established by the Department (the "Committee"). (1) The Committee used a consensus approach to develop its accepted standards to be used by utilities and municipalities for street excavation and restoration procedures ("Committee Standards"). (2)

COM/Gas fully supports the consensus efforts of the Committee in developing the Committee Standards. The Committee's approach produced a workable set of standards that have been accepted by both utilities and municipalities as appropriate procedures for street excavation and restoration. COM/Gas recommends that the Department adopt the Committee Standards to the maximum extent possible. (3)

In these comments, COM/Gas identifies several critical provisions of the

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Departments' s Proposed Standards that require modification or clarification. In these areas, COM/Gas compares the relevant provisions of the Committee Standards. In addition to presenting these comments, COM/Gas supports the comments filed today by the New England Gas Association, of which COM/Gas is a member.

B. Specific Comments on Proposed Standards

1. 03 Minimum Permit Requirements

In its Proposed Standards, the Department prefaces the municipal permit requirements by stating that these are "minimum requirements that a Municipality may require of a Utility when granting Permits." It is COM/Gas's understanding that the Committee intended the Committee Standards to be accepted or maximum standards and not minimum (May 11, 1999, Tr. Pp. 22-23, 43, 46). The consensus agreed to by the Committee produced a uniform set of procedures that all utilities and municipalities could rely on for street excavation and restoration activity throughout the state. This approach promotes conformance and use of the same procedures in like conditions by all utilities across service areas and throughout all municipalities. The treatment of the Standards as minimum may lead to unreasonable variations in the application of procedures resulting in the expenditure of unnecessary resources and costs. Therefore, consistent with the Committee Standards, COM/Gas recommends that the Department expressly state that the Standards are the maximum accepted standards that are to be applied by municipalities regarding street excavation and restoration requirements. (4)

2. Section 3.3

The Department's Proposed Standards require 72-hour advance notice to the Dig Safe system on any excavation. As an initial matter, COM/Gas recommends that the term "Dig Safe" be included in the Definitions section of the Standards. Further, COM/Gas recommends that, rather than stating a specific time requirement, the Standards simply provide that "The Utility shall provide notice in accordance with the Dig Safe requirements." In this way, the Standards will incorporate the Dig Safe requirements concerning emergency excavations, which, in some circumstances, can be performed without 72 hours' advance notice (see 220 C.M.R. 99.04(2)).

3. Section 3.5

The Department's Proposed Standards require that "A copy of the Permit must be on the job site at all times for inspection." COM/Gas recommends that this provision include the qualification ("except for "Emergency Repair Work"), to allow for emergency circumstances where a permit would not be obtained by a utility before commencing the emergency work.

4. 95 % Modified Proctor Density

Throughout its Proposed Standards, the Department makes reference to and requires compaction of soil to meet a value of 95 % modified Proctor density (see §§ 8.0, 8.5, 8.12.1, 8.13.1, 9.8). COM/Gas believes that reference to this specific value is not necessary and it may lead to a belief that certain, extra field equipment may be necessary to comply with the soil compaction requirements within the Standards.

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COM/Gas believes that the reference is unnecessary because, as stated in Section 8.6 of the Proposed Standards, "Compliance with these standards will insure satisfactory compaction." Further, the procedure set forth in Section 8.12.1 (without reference to 95 % modified Proctor density) is an acceptable means of verification to ensure proper compaction. Therefore, COM/Gas recommends that the Standards not contain any reference to 95 % modified Proctor density. Also, COM/Gas notes that the Proctor density test applies only to soil and not to pavement, thus, the reference to 95 % Proctor density in Section 9.8 of the Proposed Standards should be removed.

5. Section 9.14

At Section 9.14 of the Proposed standards, the Department prohibits the installation of bituminous concrete between November 15th and April 15th. COM/Gas believes that the Standards should allow for the use of bituminous concrete as long as it is available. Also, Section 9.14 appears to conflict with Section 9.11.b., which identifies a different time frame regarding the availability of bituminous concrete ("between December 1 and March 30 when bituminous concrete is not available"). Therefore, COM/Gas recommends that Section 9.14 of the Proposed Standards be deleted.

6. Section 9.5

In Section 9.5 of its Proposed standards, the Department provides

the restoration of single patches up to five feet by seven feet in area shall be by the infrared method, unless another method is agreed to by the Municipality.

COM/Gas believes that other means of restoration are satisfactory to accomplish the task. COM/Gas believes that the requirement for use of only one method appears unnecessary and not based on substantial proof that its exclusive use is warranted. Therefore COM/Gas recommends that the second sentence of Section 9.5 of the Proposed Standards be deleted.

7. Section 9.16

In Section 9.16 of its Proposed Standards, the Department requires inspection of temporary patches monthly and after severe meteorological events. COM/Gas believes that, because of a utility's responsibility to maintain temporary patches in a safe condition, a specific timing for inspection is not necessary. In particular, inspections after a "severe meteorological event" (5) may be inappropriate because the primary focus of a utility in that circumstance will be restoration of service and other safety concerns rather than inspection of temporary patches.

8. Section 8.4

Section 8.4 of the Proposed Standards provides:

CDF [Controlled Density Fill] shall be utilized for those excavations in areas where the size of the excavation and the number of underground facilities is such that adequate soil compaction cannot be achieved.

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The comparable requirement in the Committee Standards provides:

It [CDF] shall be used in the following conditions:

a. In excavations where compaction cannot be readily accomplished with normal compaction methods, i.e. vacuum holes, utility clusters.

COM/Gas believes that the specified circumstances for the use of CDF (vacuum holes and utility clusters) are necessary to provide explicit direction for the use of this methodology. The variability in the understanding of the term "size of the excavation" will lead to uncertainty in the application of this Standard, which may result in the expenditure of unnecessary funds. Therefore, COM/Gas recommends that the Department retain the reference to vacuum holes and utility clusters when specifying the use of CDF.

9. Section 9.4

Section 9.4 of the Proposed Standards provides:

Same day permanent patches shall be utilized unless exempted in the Permit.

The comparable requirement of the Committee Standards provides:

All non-emergency pavement excavations shall be repaired with same-day permanent patches unless specifically exempted in the permit.

COM/Gas recommends that the Department adopt the concept set forth in the Committee Standards because utilities may not be able to utilize permanent patches in emergency circumstances. Thus, the Department could add the qualifier "Except for instances of Emergency Repair Work" to its Standard at Section 9.4.

10. No Contractor Relationship

The Committee Standards contain a provision stating that "there is no contractor relationship between the municipality and the utility regulated by the DTE [the Department]." There is no comparable provision in the Department's Proposed Standards. COM/Gas believes that such a statement is necessary in the Standards so that the municipality/utility relationship is not expanded beyond the grantor/grantee relationship that pertains to street opening permits. Therefore,

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COM/Gas recommends that a provision similar to the following be added to Section 01 of the Standards:

Nothing in these standards is intended to create a contractor relationship between the Municipality and the Utility.

C. Conclusion

COM/Gas endorses the use of accepted, maximum standards as set out in the Committee Standards and as adopted, for the most part, in the Department's Proposed standards. COM/Gas recommends that the Department modify its Proposed Standards as provided herein so that the utilities and municipalities can implement a workable set of Standards regarding the excavation and restoration of public streets.

Dated: May 18, 1999

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1. The Committee consisted of representatives from the gas, electric, water, cable, and telephone companies, the New England Gas Association, Massachusetts Municipal Association, Massachusetts Highway Department, Massachusetts Highway Association, and the Southeastern Regional Services Group.
2. The Committee was not able to reach a consensus on two issues: use of flowable fill and use of infrared method for restoration of single patches up to five feet by seven feet.
3. Because COM/Gas supports the use of uniform standards for street excavation and restoration procedures as developed by the Committee, we do not, at this time, comment on the merits of the performance-based approach outlined by Commissioner James Connelly at the May 11, 1999 hearing. If the Department favors the performance-based approach, COM/Gas would expect the use of additional technical conferences, written comments, and hearings to develop an appropriate model.
4. If the Departments does not treat the Standards as accepted maximum, COM/Gas recommends that the Department consider developing a performance-based approach as outlined by Commissioner Connelly at the May 11, 1999 hearing.
5. The term "severe meteorological event" is not defined in the Proposed Standards.